A

SABAEE BUJANG

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
ABDUL KADIR SULAIMAN JCA
ABDUL AZIZ MOHAMAD JCA
HASHIM YUSOFF JCA
[CRIMINAL APPEAL NO: Q-05-46-1999]

C

29 NOVEMBER 2005

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Caution-statement by accused - Whether properly admitted - Oral and documentary evidence identifying accused as person in possession of items* D *worn by victim - Corroboration, whether mandatory - Whether any grounds to interfere with decision of trial judge*

This was an appeal by the accused against his conviction and sentence as handed down by the trial judge (after a trial with assessors) for the offence of murder under s. 302 of the Penal E Code. In his summing-up, the trial judge had instructed the assessors to look for corroboration and to decide on the truthfulness and effect of the accused's caution-statement as well as the weight, if any, to be placed on it. From their answers as given to the trial judge, the assessors had believed and accepted F the caution-statement to be true, *ie*, that it was voluntarily made and, therefore, admissible.

Held (dismissing the appeal)
Per Abdul Kadir Sulaiman JCA:

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[1] The voluntariness of a caution-statement is a question of fact. The trial judge was correct in holding that the caution-statement made by the accused was voluntary and thus admissible. (para 6)

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[2] The trial judge was also correct in admitting/accepting exhibits P3 (a gold necklace) and P2 (the counterfoil of a pawn receipt), as well as the evidence of both the pawn-shop proprietor and his assistant, as indicating that it was I the accused who had pawned the gold necklace which

belonged to the deceased/murder-victim. Indeed, the accused's identity card number was recorded on the pawn-receipt counterfoil. (para 7)

[2a] This was not a case in which corroboration would be required as a matter of law or of practice. If available, it would strengthen the prosecution's evidence; and if there was none, then it would be a matter of the credibility of the evidence of the prosecution's witnesses and the weight to be attached to it. (para 8)

[2b] The accused had not only led the police to the discovery of the gold necklace in the pawn-shop but also to the wrist-watch which was worn by the victim at the material time at the scene of the crime. The accused had not been able to raise a reasonable doubt on the prosecution's case. (para 9)

[Conviction and sentence affirmed.]

Bahasa Malaysia *translation of headnotes*

Ini adalah rayuan tertuduh terhadap sabitan dan hukuman yang dijatuhkan ke atasnya oleh hakim bicara (selepas perbicaraan dengan pengapit) atas kesalahan bunuh di bawah s. 302 Kanun Keseksaan. Dalam rumusannya, hakim bicara telah mengarahkan pengapit untuk melihat kepada keterangan sokongan dan memutuskan tentang kebenaran kenyataan beramaran tertuduh dan kesan-kesannya, serta menentukan apakah pertimbangan yang harus diberi kepadanya, jika ianya boleh diberi. Dari jawapan yang diberikan oleh pengapit kepada hakim bicara, pengapit percaya dan menerima kenyataan beramaran sebagai benar, iaitu, bahawa ia dibuat dengan sukarela, dan kerana itu, boleh diterima-masuk.

Diputuskan (menolak rayuan)
Oleh Abdul Kadir Sulaiman HMR:

[1] Soal kesukarelaan sesuatu kenyataan beramaran adalah satu persoalan fakta. Yang arif hakim betul bilamana memutuskan bahawa kenyataan beramaran yang dibuat oleh tertuduh dibuat dengan sukarela dan dengan itu boleh diterima-masuk.

[2] Hakim bicara juga betul dalam menerima-masuk/menerima eks. P3 (seutas rantai emas) dan P2 (keratan surat pajak), serta keterangan kedua-dua pemilik kedai pajak dan pembantunya, sebagai menunjukkan bahawa tertuduh adalah orang yang

memajakkan rantai emas kepunyaan si mati/mangsa bunuh. Malah, nombor kad pengenalan tertuduh telah dicatit pada keratan surat pajak berkenaan.

[2a] Ini bukanlah kes di mana keterangan sokongan diperlukan sebagai suatu perkara undang-undang atau amalan. Jika diperolehi, ia akan memperkuat keterangan pendakwaan; jika tidak, persoalan akan tertumpu kepada kebolehpercayaan keterangan-keterangan yang diberikan oleh saksi-saksi pendakwaan serta pertimbangan yang boleh diberikan kepadanya.

[2b] Tertuduh membawa polis bukan sahaja kepada penemuan rantai emas di kedai pajak tetapi juga kepada penemuan jam tangan yang dipakai oleh mangsa pada waktu material di tempat kejadian. Tertuduh gagal membangkitkan keraguan munasabah ke atas kes pendakwaan.

[Sabitan dan hukuman disahkan.]

Case(s) referred to:
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 MLJ 232

Legislation referred to:
Penal Code, s. 302

For the appellant - Foster Nicol Bangau; M/s Bangau & Co
For the respondent - Kamaruzaman Abd Jalil DPP

Reported by Gan Peng Chiang

JUDGMENT

Abdul Kadir Sulaiman JCA:

[1] This was an appeal against both conviction and sentence imposed by the learned High Court Judge against the appellant for an offence of murder under s. 302 of the Penal Code. The trial before the learned judge was with the aid of assessors as provided in the law applicable to Sarawak before the provisions were repealed.

[2] We heard the appeal on 25 January 2005. By a unanimous decision, we dismissed the appeal and affirmed the conviction and sentence imposed by the learned judge upon the appellant. We now provide our reasons for the decision we made.

[3] The prosecution in this case made use of the appellant's cautioned statement, exh. P23, to implicate him with the murder of one Fazlyanty bte. Affandy which allegedly took place on 21 October 1992, at about 6.15am at Sg. Patok Besar, Oya, Dalat, Sibu, Sarawak.

[4] From the evidence found in the record, the learned judge summed up to the assessors for their answer on the issue of the truthfulness and whether any, and if so, what weight and effect to place on the cautioned statement, regard being had to the character of the cautioned statement, the circumstances leading to its making and the circumstances in which it was made. Over and above this, so as to satisfy themselves of its truthfulness, they were asked to look for corroborative evidence. From the answers they gave to the learned judge, they believed and accepted the cautioned statement to be true. In other words, the cautioned statement must have been voluntarily made by the appellant and is admissible evidence against the appellant.

[5] The question of voluntariness or otherwise of any cautioned statement is a question of fact. As stated in *Dato' Mokhtar bin Hashim & Anor. v. Public Prosecutor* [1983] 2 MLJ 232 at p. 249:

> It is difficult to draw clear guidelines on what the court should do in all cases where a question arises as to the voluntariness of a statement of an accused person. Facts differ from case to case. In the ultimate analysis each case has to be determined on its own merits. It has been accepted as sound principle that even where circumstances have been shown by the defence which opened a statement to serious criticism and thereby bringing its voluntariness gravely into question the court could still hold that a statement is voluntary if after appreciating the importance and significance of those circumstances the court can find that there are other facts and circumstances to completely assure the voluntariness of the statement.

[6] Thus on the facts of this case, we were satisfied that the learned judge was right in holding that the said cautioned statement of the appellant was made voluntarily and therefore, the appeal on this ground failed.

[7] Next is the issue of the discovery of various exhibits arising out of the information given by the appellant to the police. On 30 October 1992 the appellant led the police to Poh Lai Pawnshop, Sibu, where the police recovered from PW2, the proprietor of the pawnshop, exh. P3, a gold necklace, together with a counterfoil

of a pawn receipt marked as exh. P2. The gold necklace was later identified to be the one belonging to the victim. According to the evidence of the proprietor and his employee, PW3, on 21 October 1992, the appellant came to the shop to pawn P3 which they valued at RM500. PW3 in the presence of PW2 wrote on a pawn receipt and the counterfoil P2, the particulars and handed the receipt to the appellant. According to PW2, exh. P2 is only a simple form kept by the shop in relation to the item pawned and the receipt issued. On exh. P2 the following information was written on it by PW3. Against "Bangsa" it was written B.L. The alphabet "B" stands for "Malay" because, according to PW2, it is more appropriate and close to the Foochow accent, and the alphabet "L" stands for "Male". "Nama Barang" was written in Chinese character which signifies "necklace one". Against "Jenis Barang" was written the figure "33" representing the weight of the item pawned in grams. Against "Tarikh Pajak" was the date item pawned which in this case was written as "21/10" signifying 21 October 1992. The amount borrowed was recorded as RM500. Of significance, against "Tarikh" was written the identity card number of the appellant which was "K0135094". All these matters recorded on the counterfoil were fully explained by PW2 and PW3 in their respective evidence. According to the learned judge, he accepted the evidence of PW2 and PW3 and by the unanimous answer given by the assessors, they too accepted the evidence of PW2 and PW3 that it was the appellant who on 21 October 1992 came to the pawnshop to pawn the golden necklace, exh. P3. The learned counsel for the appellant, however, submitted that without any clear explanation or confirmation by the court interpreter that the alphabets "B" and "L" on exh. P2 stood for "Malay" and "Male", the exhibit should not have been admitted. We disagreed because PW2 and PW3 gave clear evidence on the matter and that had been their practice in dealing with the business. On the matter of the assessment of the evidence, it was a matter for the learned judge and we saw no avenue to fault the judge on the matter. Therefore, this ground also failed.

[8] As to the identity of the appellant being the person pawning the gold necklace on 21 October 1992, the reliance was on the evidence of PW2, the proprietor of the pawnshop. He testified that on 30 October 1992 the police party brought along to his shop one person who was handcuffed, who looked like a Malay. He then identified the appellant seated in the dock as being this person. He further testified that he had seen this man about 10 days before that date which was on 21 October 1992

at his shop to pawn the gold necklace. He asked the man to produce his identity card and took the gold necklace from him and weighed it. He valued the item at RM500. On the part of PW3, his worker, his evidence was straightforward. When shown exh. P2, he testified that the item pawned was a gold necklace. Since it had been a long time he was not sure whether he could identify the necklace. But when exh. P3 was shown to him, he replied in the affirmative that it was pawned on 21 October 1992. When asked as to the identity of the person who pawned the necklace, his answer was that since it had been a long time, he could only remember that the person who pawned the item was a Malay. In his honesty, when asked whether he could identify the person, he replied in the negative. A similar reply was given by him when asked whether he could tell of any special marking found on the necklace. He confirmed that at the material time of the pawning PW2 was with him. The learned counsel for the appellant submitted that without any corroboration from PW3 as to the identity of the appellant, the learned judge ought not to have accepted the evidence of PW2 that it was the appellant who pawned exh. P3 in his shop on 21 October 1992. Our answer to that was that this is not a case where corroboration was required as a matter of law or practice. If there was one, of course it would further strengthen the evidence for the prosecution. If there was none, then it was a matter of the credibility of the evidence of PW2 and the weight to be attached to it. In this case both the learned judge and the assessors accepted the evidence of PW2. There was nothing inherently incredible in the evidence so tendered. Further the evidence of PW3 did not in any way weaken the evidence tendered by PW2. PW3 had no interest to serve and gave his evidence in a straightforward fashion without in any way wanting to implicate the appellant. We saw no reason therefore to interfere with the findings of the court below. The particulars of the identity card of the appellant, in particular the number, fixed the appellant as being the person who pawned the necklace of the victim at the pawnshop.

[9] Next, the identification of exh. P3, the gold necklace, and exh. P6, the wristwatch, worn by the victim at the time of her death which were subsequently recovered by the police, the former in a pawnshop and the latter at the scene of the crime at Kg. Bakong, Oya, in the river. Arising out of the investigation into the case, the appellant led the police to the recovery of the exhibits, including the two above mentioned items. Upon an

A analysis of the evidence, we were satisfied that the learned judge was correct in accepting the evidence so placed before him at the trial.

[10] On the whole of the evidence, we agreed with the learned B Judge that the prosecution in this case had proved the case against the appellant upon the charge as framed beyond reasonable doubt that the death of the deceased victim was caused by the act or acts of the appellant which act or acts were done with the intention of causing the death of the deceased. The C appellant by his defence had not raised any reasonable doubt as to the truth of the prosecution case against him or as to his guilt. In the circumstance, the appeal was dismissed and the conviction and sentence imposed by the learned judge were affirmed.

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